

A Funding Agreement Between the State of Nevada
Acting By and Through Its Division of Environmental Protection
Recycling and Solid Waste Grant Program
(Grantor)

901 South Stewart Street, Suite 4001, Carson City, NV 89701

phone: (775) 687-9462

fax: (775) 687-5856

And

(Grantee)

address _____

phone: () _____ - _____

fax: () _____ - _____

WHEREAS, pursuant to NRS 444A.110 the State Environmental Commission on March 8, 2006 passed regulations permitting the Division of Environmental Protection to award grants to municipalities, educational institutions and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources and

WHEREAS, funding for grants will be based on availability and

WHEREAS, the project meets the goals and policies of the Bureau of Waste Management of the Nevada Division of Environmental Protection and

WHEREAS, the grantee is a(n) _____ (municipality, educational institution, or nonprofit organization);

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Funding Agreement shall not become effective until and unless approved by the Director of the Nevada Division of Environmental Protection and the governing body of _____.

2. DEFINITIONS. "Grantor" means the State of Nevada through Nevada Division of Environmental Protection, its authorized person or representatives acting on its behalf. "Grantee" means _____. "Parties" means the Grantor and Grantee.

3. FUNDING AGREEMENT TERM. This Funding Agreement shall be effective from _____ to _____, unless sooner terminated by either party as specified in paragraph 10 herein.

4. NOTICE. All notices or other communications required or permitted to be given under this Funding Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other parties at the addresses specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the responsibilities and duties of each party as well as the scope of the project shall be specifically described as; this Funding Agreement incorporates the following in descending order of constructive precedence;

ATTACHMENT A: Work Plan with Schedule

ATTACHMENT B: Schedule and Terms for Payment

ATTACHMENT C: Project Budget Summary

ATTACHMENT D: Assurance Form

6. CONTRACTS. Grantee may enter into contracts to complete the work specified in this agreement.

7. ASSENT.

a. The parties agree that the terms and conditions listed on incorporated attachments of this Funding Agreement are also specifically a part of this Funding Agreement and are limited only by their respective order of precedence and any limitations specified.

b. Grantee agrees to submit the results of all studies and analysis performed under this agreement to the Grantor.

c. Grantee agrees to include in any document, statement or promotional item issued by grantee that the described project statement indicating that the money for the project was provided through a grant from the Nevada Division of Environmental Protection. Also Grantee agrees before issuing any such document, statement or promotional item, the grantee must submit the documents, statements or promotional item to the Grantor for its approval.

d. Grantee agrees to repay any amount that Grantor determines are disallowed by the plan and terms of payment within thirty (30) days of notification.

8. INSPECTION & AUDIT.

a. Books and Records. Grantee agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to Grantor, or its authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Grantee agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices, financial statements and supporting documentation shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Grantee where such records may be found by Grantor's designated representative.

c. Period of Retention. All books, records, reports, and statements relevant to this Funding Agreement must be retained a minimum of five years. The retention period runs from the date of Grantor's last Funding Agreement payment, or from the date of termination of the Funding Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

9. FUNDING DISTRIBUTION: Funding in an amount not to exceed the *Total Project Cost*, shown in Attachment D (Project Budget) shall be disbursed to Grantee in the form of an advance or reimbursement(s). Original invoices, or a request for an advance, shall be submitted by Grantee to the Grantor to receive funds.

10. FUNDING AGREEMENT TERMINATION.

a. All payments under this grant are contingent upon receipt by Nevada Division of Environmental Protection of sufficient funds, necessary to carry out the purpose of this grant.

b. Grantor shall cancel this grant agreement if the grant is not completed in accordance with the terms and conditions of the grant, including, without limitations time schedules, unless the Grantor determines that a variance is justified.

c. If the Grantor determines that a project is no longer beneficial, the Grantor may, upon its own initiative or at the request of the Grantee, terminate the grant thirty (30) days after giving notice of termination. The Grantor may order the Grantee to cease expending money awarded by the grant effective of the issuance of the notice of termination.

d. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Funding Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or if Grantee becomes insolvent, subject to receivership, or becomes

voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or if it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Grantee, or any agent or representative of Grantee, to any officer or employee of the State of Nevada with a view toward securing a Funding Agreement or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Funding Agreement, then this Funding Agreement may be immediately terminated by the Grantor.

a. Winding up Affairs upon Termination. In the event of termination of this Funding Agreement for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Funding Agreement. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Grantee shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Grantor;
- iii. Grantee shall execute any documents and take any actions necessary to effectuate an assignment of this Funding Agreement if so requested by the Grantor;

11. FUNDING ADVANCES. If the Grantor makes payments to the grantee before the completion of the project, the Grantee shall, upon completion of the project, cancellation of the grant, or termination of the project, return to the Grantee any money that has not been spent by the grantee within 30 days.

12. REMEDIES. Except as otherwise provided for by law or this Funding Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Grantee to any State agency.

13. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases.

14. FORCE MAJEURE. No party shall be deemed to be in violation of this Funding Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Funding Agreement after the intervening cause ceases.

15. INDEMNIFICATION. To the fullest extent permitted by law, Grantee shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Grantee, its officers, employees and agents for this Funding Agreement.

16. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Funding Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

17. SEVERABILITY. If any provision contained in this Funding Agreement is held to be unenforceable by a court of law or equity, this Funding Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Funding Agreement unenforceable.

18. ASSIGNMENT. Grantee shall neither assign, transfer nor delegate any rights, obligations or duties under this Funding Agreement without the prior written consent of Grantor.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Grantee may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Funding Agreement on behalf of each party has full power and authority to enter into this Funding Agreement. Grantee acknowledges that as required by statute or regulation this Funding Agreement is effective only after approval by the Division of Environmental Protection and only for the period of time specified in the Funding Agreement. Any services performed by Grantee before this Funding Agreement is effective or after it ceases to be effective are performed at the sole risk of Grantee.

21. GOVERNING LAW; JURISDICTION. This Funding Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. Grantee consents to the jurisdiction of the Nevada district courts for enforcement of this Funding Agreement. The Parties agree that the jurisdiction and venue for court, if necessary, shall be in the First Judicial District Court in Carson City, Nevada.

22. ENTIRE FUNDING AGREEMENT AND MODIFICATION. This Funding Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Funding Agreement specifically displays a mutual intent to amend a particular part of this Funding Agreement, general conflicts in language between any such attachment and this Funding Agreement shall be construed consistent with the terms of this Funding Agreement. Unless otherwise expressly authorized by the terms of this Funding Agreement, no modification or amendment to this Funding Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Funding Agreement to be signed and intend to be legally bound thereby.

_____ Leo Drozdoff Grantor Signature	_____ Date	_____ Administrator, Nevada Division of Environmental Protection Grantor's Title
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_____ Grantee Signature	_____ Date	_____ Grantee's Title
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